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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Anna Caballero, Chair  
2023 - 2024 Regular Session

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### SB 1159 (Dodd) - California Environmental Quality Act: roadside wildfire risk reduction projects

**Version:** April 24, 2024

**Urgency:** No

**Hearing Date:** May 13, 2024

**Policy Vote:** E.Q. 7 - 0, N.R. & W. 11 - 0

**Mandate:** No

**Consultant:** Ashley Ames

**Bill Summary:** This bill would direct the Governor's Office of Planning and Research (OPR), in consultation with relevant departments, to evaluate, and the California Natural Resources Agency (CNRA) secretary to consider, creating a categorical exemption from the California Environmental Quality Act (CEQA) for roadside projects no more than five road miles from a municipality or census-designated place that are undertaken solely for the purpose of wildfire risk reduction.

#### **Fiscal Impact:**

- OPR estimates ongoing costs of about \$450,000 annually (General Fund) for two positions to evaluate adopting an additional CEQA exemption within the Guidelines and to consider appropriate eligibility criteria for these projects, as specified.
- CNRA estimates ongoing costs of an unknown amount, likely \$1 million or more (General Fund), to implement the provisions of this bill.
- To the extent this bill increases the number or ease of completing roadside projects, unknown ongoing cost pressure (various funds) to provide funds for CalFire to implement the additional projects.
- To the extent the bill encourages activities that reduce the occurrence or severity of catastrophic wildfires from what otherwise would have occurred, this bill would result in potentially significant savings due to avoided fire suppression costs (General Fund). CalFire spends roughly \$1 billion annually (General Fund) on "emergency fire suppression" – additional fire suppression resources needed when a fire continues to spread after the "initial attack" or about the first 24 hours. Fires in treated forests are more likely to be contained during the initial attack, and are much less likely to become catastrophic wildfires that require emergency fire suppression resources.

#### **Background:**

*The A, B, C's of CEQA.* CEQA is designed to (a) make government agencies and the public aware of the environmental impacts of a proposed project, (b) ensure the public can take part in the review process, and (c) identify and implement measures to mitigate or eliminate any negative impact the project may have on the environment. CEQA is enforced by civil lawsuits that can challenge any project's environmental review. Nonprofits, private individuals, public agencies, advocacy groups, and other organizations can all file lawsuits under CEQA.

Under CEQA, a project must undergo an environmental analysis unless it qualifies for a specific exemption. This process starts with an initial study, which determines what level

of further environmental review is needed for a given project. If a project has no significant effects on the environment, or if those effects can be fully mitigated, the project can move forward with a negative declaration or mitigated negative declaration. If the initial study finds that the project has potential significant effects on the environment, then a full environmental impact report (EIR) is conducted.

*CEQA exemptions: statutory vs. categorical.* A project is exempt from CEQA if it is ministerial (i.e., it does not involve a discretionary decision), or if there is a specific statutory or categorical exemption that applies to the project. Statutory exemptions are created by the Legislature and apply even if a project has the potential to significantly affect the environment. In contrast, categorical exemptions, which are listed in the CEQA guidelines, generally do not apply if there are significant environmental impacts associated with the project. Categorical exemptions are developed by OPR as part of the CEQA guideline process, and become part of the CEQA guidelines when they are certified and adopted by the CNRA secretary.

*Wildfires and roads.* Catastrophic and devastating wildfires have occurred repeatedly in the state in recent years. Nine of the 20 largest and seven of the 20 most destructive wildland fires in state history occurred in 2020 and 2021 when almost seven million acres burned. The 2020 August Complex Fire in northern California – the largest fire in California’s modern history – burned over one million acres while the 2021 Dixie Fire burned almost one million acres. Two wildland fires in recent years burned over the crest of the Sierras, which had not been previously observed. In the last several years, tens of thousands of structures – mostly homes – have been destroyed from wildland fire, insured losses incurred are in the billions of dollars, prime habitat has been destroyed or damaged, and, tragically, hundreds of lives have been lost. In addition, millions of Californians have been exposed to unhealthy air quality due to the wildfires.

Wildfires can originate from both natural sources such as lightning, and human ignitions such as those started by accident or set intentionally by arsonists. The majority of wildfires are started by human activity: about 86% of wildfires in California between 1992 and 2020 according to the U.S. Forest Service. The Department of Forestry and Fire Protection (CalFire) estimates 95% of wildfires are human caused. Roadways can increase the chance of human-caused fire ignition, particularly in the Wildland-Urban Interface. A 2021 study in Scientific Reports notes that proximity to roads, alongside other variables like grass cover, temperature, and vapor pressure deficit, were significant predictors of wildfire risk in California. According to CalFire, at least seven large fires (300 acres or greater) were started by vehicles in 2022 in the state.

The deadly Carr Fire in 2018 started along a highway. The fire ignited near the Carr Powerhouse Road along Highway 299 in the Whiskeytown National Recreation Area. The official cause of the fire was a flat tire of a vehicle trailer in 100-degree weather. The wheel is thought to have contacted the pavement sending sparks into the highway median and forest habitat gradient. The fire burned almost 230,000 acres, resulted in eight fatalities, four of whom were first responders, destroyed 1,079 residences, and devastated a widespread area in the Redding, California region. According to a ProPublica article, the California Department of Transportation (CalTrans), which owns and manages Highway 299, spent a week in 2016 pruning trees and clearing vegetation along the narrow state right of way. Once the highway crossed over national forest and parkland, CalTrans reached out to Whiskeytown officials to continue the work on federal

land outside of CalTrans' right-of-way. For a variety of reasons, the work did not happen, leaving the risk unaddressed.

The *California's Wildfire and Forest Resilience Action Plan (Action Plan)* released by the Wildfire and Forest Resilience Task Force (Task Force) in 2021 notes that a fire-safe state highway system is vital to reducing wildfire ignitions and ensuring emergency evacuation routes. Over 5,000 centerline miles of state highways are built in rural settings, including forestland, chaparral, and grasslands. CalTrans estimates 2,600 centerline miles of California's highway system need fuel reduction treatment within and alongside the CalTrans-owned right of way. Hazardous fuels reduction along roadways can reduce fire hazards and risks by creating a break in horizontal and vertical fuel continuity that can modify future wildfire behavior and improve community protection efforts.

In many cases, the thinning of vegetation along road corridors will cross federal, state, or local boundaries. For example, 3,000 miles of road cross federal lands. According to the *Action Plan*, CalTrans is establishing a framework for collaborative fuels reduction projects to protect roadway travelers, communities along highways, and to reduce roadside ignitions along primary and secondary emergency evacuation routes. CalTrans also commits in the *Action Plan* to partnering with adjacent landowners to treat priority areas along its 2,600 miles of high-risk roadways and to develop a statewide Good Neighbor Agreement with the U.S. Forest Service to treat adjacent federal lands.

*California Vegetation Treatment Program (CalVTP)*. In response to concerns raised by communities that the CEQA process was slowing down their ability to launch critical wildfire fuel reduction projects, the Board of Forestry and Fire Protection (Board) adopted the CalVTP. The CalVTP provides a CEQA compliance tool to expedite the implementation of wildfire resilience projects. The CalVTP EIR covers 20.3 million acres of fire-prone land in the state responsibility area. Under the CalVTP, a project proponent could implement prescribed burning, mechanical treatments, manual treatments, herbicide application, and prescribed herbivory to reduce hazardous vegetation around communities in the Wildland-Urban Interface, to construct fuel breaks, and to promote ecological restoration. To utilize the CalVTP, a project proponent must complete a site-specific environmental analysis. Once approved, it is valid for up to 10 years, allowing multiple rounds of vegetation treatment and maintenance using the same environmental document.

*The scale of the fuel management problem.* Prior to colonization and associated fire suppression activities, as many as 4.5 million acres burned annually in the state. Estimates suggest that on the order of 10 – 30 million acres of the state may benefit from treatment by low-intensity fire, such as cultural burning.

In August 2020, California and the US Forest Service agreed to increase vegetation treatment and maintenance to one million acres annually – 500,000 acres treated each – by 2025. Recent progress suggests that the state is on the order of half-way to its 2025 goal. The Strategic Plan establishes annual targets of 50,000 acres treated by CalFire, and an additional 25,000 acres for state public lands. Cultural fire practitioners and tribes are in the "other lands managers" category with private landowners, nongovernmental organizations, Prescribed Burn Association, and local jurisdictions

with a goal of 25,000 acres. CalFire has reached about half of the target acres to be burned annually in the last few years.

**Proposed Law:** This bill would direct OPR to evaluate, and CNRA to consider, creating a categorical exemption from the CEQA for roadside projects no more than five road miles from a municipality or census designated place that are undertaken solely for the purpose of wildfire risk reduction. Specifically, this bill would:

1. By January 1, 2026, direct OPR, in consultation with DFW, CalFire, the State Water Board, and other relevant agencies, to evaluate, and the CNRA secretary to consider, creating a categorical exemption under CEQA for roadside projects no more than five road miles from a municipality or census designated place that are undertaken solely for the purpose of wildfire risk reduction.
  - a. Direct OPR, in consultation with the same agencies, to consider appropriate eligibility criteria for this type of categorical exemption, including, among others, the distance from the edge of an improved road or surface, any disturbance to soil and resultant impacts on sedimentation, protection of natural resources such as trees and sensitive, rare, threatened, or endangered plants, potential impacts to wildlife, and considerations for lands under conservation easement or identified for conservation in an adopted natural community conservation plan, habitat conservation plan, or other adopted natural resource protection plan, as specified
  - b. Provide that an exemption for this type of project does not limit any other statutory or categorical exemption that may otherwise apply to roadside projects undertaken to reduce wildfire risk.
    - i. Specify that a project that is exempt shall comply with all requirements otherwise imposed by law, including, but not limited to, the California Endangered Species Act, the federal Endangered Species Act, the Native Plant Protection Act, and any other applicable state and federal laws.

### **Related Legislation:**

AB 1951 (Vince Fong, 2024) would exempt a project for wildfire prevention, including the removal of trees and brush, within 50 feet of either side of a roadway, from CEQA.

AB 2643 (Wood, 2024), among other things, would make the CEQA exemption permanent for projects to conserve, restore, protect, or enhance, and assist in the recovery of California native fish and wildlife, and the habitat upon which they depend; and to restore or provide habitat for California native fish and wildlife.

AB 211 (Committee on Budget, Chapter 574, Statutes of 2022) extended the sunset from January 1, 2023, to January 1, 2028 for the CEQA exemption for prescribed fire, thinning, or fuel reduction projects undertaken on federal lands that have been reviewed under the National Environmental Policy Act, as specified; and expanded this exemption for reforestation and habitat restoration projects undertaken on federal lands that have been reviewed under the National Environmental Policy Act, as specified.

AB 297 (Gallagher, 2021) would have exempted from CEQA projects or activities related to forest health and fuel reduction, including, but not limited to, projects undertaken pursuant to the federal Good Neighbor Authority, that involve thinning overgrown brushes or trees 10 inches or less in diameter by mechanical thinning, pile burning, prescribed fire, and grazing. This bill was not heard in the first policy committee.

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